

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

LOUISE E. CURTIS,	)	
	)	
Claimant,	)	<b>IC 01-509562</b>
v.	)	
	)	
M. H. KING COMPANY,	)	<b>ORDER DENYING</b>
	)	<b>RECONSIDERATION</b>
Employer,	)	
and	)	
	)	Filed October 15, 2004
IDAHO STATE INSURANCE FUND,	)	
	)	
Surety,	)	
Defendants.	)	
	)	

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Pursuant to Idaho Code § 72-718, Claimant timely moves for reconsideration of the Industrial Commission's decision of July 30, 2004, in the above referenced case. With her motion, Claimant subsequently filed a supporting memorandum on August 19, 2004. Defendants filed a reply to Claimant's motion on September 2, 2004. Claimant then filed a brief in response on September 13, 2004, and thereafter entered two additional "typographical error correction" filings for consideration by the Commission. Claimant argues that the Commission made various errors of fact and law concerning the issue of Claimant's alleged industrial accidents.

Claimant essentially asserts that neither the Referee, nor the Commission, comprehended the medical science driving the case and that the Referee's discussion of Dr. Chmell's opinion established he did not understand avascular necrosis any better than Dr. Rudd whose illogical opinion he relied upon to make his decision. She also asserts

that the Referee misstated the severity of the 1988 hip fracture. The Referee is further accused of ignoring pain complaints made by Claimant to the only medical provider to see her immediately after the accident. In addition, the Referee is also accused of wrongly holding that Dr. Rudd did not "materially" change his position and that he, Dr. Rudd, demonstrated a "maturation of expertise." Claimant has not shown that the rationale the Commission applied to determine the proper weight to afford Dr. Rudd's conclusions was clearly erroneous or in error of law.

The Commission is the ultimate evaluator of the evidence. The Commission made a thorough review of the evidence and carefully weighed the physicians' opinions and the parties' arguments before rendering its decision. The Claimant has not presented a reasonable justification for the Commission to reevaluate its findings of fact merely because they do not comport with Claimant's assertions. Without a showing of a legally erroneous basis for the Commission's factual findings, reconsideration of the record will not be undertaken.

Claimant claims that the decision turns on medical opinion that does not rise to the level of substantial and competent evidence required by law. The Commission disagrees. Again, a thorough review of the evidence and a vigilant weighing of the parties' arguments as well as that of the physicians' testimony was made before delivering the Commission's decision. It is the province of the Commission to weigh conflicting evidence and to judge the credibility of the physicians' testimony during deposition. No such error has been made. As such, reconsideration on this issue is not appropriate.

In addition, Claimant charges the Commission with error when it accepted the Referee's recommendation requiring Claimant to establish exactly how the trauma

impeded the blood supply to her left hip and thereby created a new and unreasonable burden of proof. We disagree. The only standard required by the Commission is that the Claimant show by a reasonable degree of medical probability that the avascular necrosis was caused by the 2001 accident. Claimant failed to meet her burden in this regard.

After having fully reviewed the record, the Commission determines the findings and order are fully supported by the record and shall remain as previously issued. Based upon the foregoing reasoning, Claimant's Motion for Reconsideration should be, and is hereby, DENIED.

DATED this \_\_15th\_\_ day of October, 2004.

INDUSTRIAL COMMISSION

\_\_\_\_\_  
R. D. Maynard, Chairman

\_\_\_\_\_  
/s/ Thomas E. Limbaugh, Commissioner

\_\_\_\_\_  
/s/ James F. Kile, Commissioner

ATTEST:

\_\_\_\_\_  
/s/ Assistant Commission Secretary

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 15th day of October, 2004, a true and correct copy of the foregoing **ORDER DENYING RECONSIDERATION** was served by regular United States Mail upon each of the following:

JOHN F. GREENFIELD  
P.O. BOX 854  
BOISE, ID 83701

JAMES A. FORD  
P.O. BOX 1539  
BOISE, ID 83701-1539

\_\_\_\_/s/\_\_\_\_\_

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